

AMENDED IN ASSEMBLY MAY 14, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1773

**Introduced by Committee on Banking and Finance (Wiggins
(Chair), Chan, Chavez, Correa, Montanez, and Vargas)
(Coauthors: Assembly Members Bogh and Strickland)**

March 13, 2003

An act to amend Section ~~786~~ 1524 of the Penal Code, relating to
~~venue~~ search warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 1773, as amended, Committee on Banking and Finance. ~~Venue~~
Search warrants: identity theft.

Existing law authorizes a court or magistrate to issue a warrant for the search of a place and the seizure of property or things identified in the warrant where there is probable cause to believe that specified grounds exist. Although statute does not directly address the issue, case law permits a magistrate to issue a warrant for a person or property in another county under certain circumstances.

This bill would provide that, in addition to any other circumstances permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute any evidence that tends to show a violation of specified identity theft crimes, a magistrate may issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in that other county.

~~Existing law provides for the jurisdiction of a criminal action involving various species of theft, and provides among other venues, that the jurisdiction of a criminal action for unauthorized use of personal identifying information includes the county where the theft of the personal identifying information occurred, or the county where the information was used for an illegal purpose.~~

~~This bill would in addition, provide that the jurisdiction of a criminal action for unauthorized use of personal identifying information would also include the county in which the victim resided at the time of the commission of the offense.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 786 of the Penal Code is amended to~~
2 *SECTION 1. Section 1524 of the Penal Code is amended to*
3 *read:*
4 1524. (a) A search warrant may be issued upon any of the
5 following grounds:
6 (1) When the property was stolen or embezzled.
7 (2) When the property or things were used as the means of
8 committing a felony.
9 (3) When the property or things are in the possession of any
10 person with the intent to use them as a means of committing a
11 public offense, or in the possession of another to whom he or she
12 may have delivered them for the purpose of concealing them or
13 preventing their being discovered.
14 (4) When the property or things to be seized consist of any item
15 or constitute any evidence that tends to show a felony has been
16 committed, or tends to show that a particular person has committed
17 a felony.
18 (5) When the property or things to be seized consist of evidence
19 that tends to show that sexual exploitation of a child, in violation
20 of Section 311.3, or possession of matter depicting sexual conduct
21 of a person under the age of 18 years, in violation of Section
22 311.11, has occurred or is occurring.
23 (6) When there is a warrant to arrest a person.
24 (7) When a provider of electronic communication service or
25 remote computing service has records or evidence, as specified in

1 Section 1524.3, showing that property was stolen or embezzled
2 constituting a misdemeanor, or that property or things are in the
3 possession of any person with the intent to use them as a means of
4 committing a misdemeanor public offense, or in the possession of
5 another to whom he or she may have delivered them for the
6 purpose of concealing them or preventing their discovery.

7 (b) The property or things or person or persons described in
8 subdivision (a) may be taken on the warrant from any place, or
9 from any person in whose possession the property or things may
10 be.

11 (c) Notwithstanding subdivision (a) or (b), no search warrant
12 shall issue for any documentary evidence in the possession or
13 under the control of any person, who is a lawyer as defined in
14 Section 950 of the Evidence Code, a physician as defined in
15 Section 990 of the Evidence Code, a psychotherapist as defined in
16 Section 1010 of the Evidence Code, or a clergyman as defined in
17 Section 1030 of the Evidence Code, and who is not reasonably
18 suspected of engaging or having engaged in criminal activity
19 related to the documentary evidence for which a warrant is
20 requested unless the following procedure has been complied with:

21 (1) At the time of the issuance of the warrant the court shall
22 appoint a special master in accordance with subdivision (d) to
23 accompany the person who will serve the warrant. Upon service
24 of the warrant, the special master shall inform the party served of
25 the specific items being sought and that the party shall have the
26 opportunity to provide the items requested. If the party, in the
27 judgment of the special master, fails to provide the items
28 requested, the special master shall conduct a search for the items
29 in the areas indicated in the search warrant.

30 (2) If the party who has been served states that an item or items
31 should not be disclosed, they shall be sealed by the special master
32 and taken to court for a hearing.

33 At the hearing, the party searched shall be entitled to raise any
34 issues that may be raised pursuant to Section 1538.5 as well as a
35 claim that the item or items are privileged, as provided by law. The
36 hearing shall be held in the superior court. The court shall provide
37 sufficient time for the parties to obtain counsel and make any
38 motions or present any evidence. The hearing shall be held within
39 three days of the service of the warrant unless the court makes a

1 finding that the expedited hearing is impracticable. In that case the
2 matter shall be heard at the earliest possible time.

3 If an item or items are taken to court for a hearing, any
4 limitations of time prescribed in Chapter 2 (commencing with
5 Section 797) of Title 3 of Part 2 shall be tolled from the time of the
6 seizure until the final conclusion of the hearing, including any
7 associated writ or appellate proceedings.

8 (3) The warrant shall, whenever practicable, be served during
9 normal business hours. In addition, the warrant shall be served
10 upon a party who appears to have possession or control of the items
11 sought. If, after reasonable efforts, the party serving the warrant
12 is unable to locate the person, the special master shall seal and
13 return to the court, for determination by the court, any item that
14 appears to be privileged as provided by law.

15 (d) As used in this section, a “special master” is an attorney
16 who is a member in good standing of the California State Bar and
17 who has been selected from a list of qualified attorneys that is
18 maintained by the State Bar particularly for the purposes of
19 conducting the searches described in this section. These attorneys
20 shall serve without compensation. A special master shall be
21 considered a public employee, and the governmental entity that
22 caused the search warrant to be issued shall be considered the
23 employer of the special master and the applicable public entity, for
24 purposes of Division 3.6 (commencing with Section 810) of Title
25 1 of the Government Code, relating to claims and actions against
26 public entities and public employees. In selecting the special
27 master, the court shall make every reasonable effort to ensure that
28 the person selected has no relationship with any of the parties
29 involved in the pending matter. Any information obtained by the
30 special master shall be confidential and shall not be divulged
31 except in direct response to inquiry by the court.

32 In any case in which the magistrate determines that, after
33 reasonable efforts have been made to obtain a special master, a
34 special master is not available and would not be available within
35 a reasonable period of time, the magistrate may direct the party
36 seeking the order to conduct the search in the manner described in
37 this section in lieu of the special master.

38 (e) Any search conducted pursuant to this section by a special
39 master may be conducted in a manner that permits the party
40 serving the warrant or his or her designee to accompany the special

1 master as he or she conducts his or her search. However, that party
2 or his or her designee shall not participate in the search nor shall
3 he or she examine any of the items being searched by the special
4 master except upon agreement of the party upon whom the warrant
5 has been served.

6 (f) As used in this section, “documentary evidence” includes,
7 but is not limited to, writings, documents, blueprints, drawings,
8 photographs, computer printouts, microfilms, X-rays, files,
9 diagrams, ledgers, books, tapes, audio and video recordings, films
10 or papers of any type or description.

11 (g) No warrant shall issue for any item or items described in
12 Section 1070 of the Evidence Code.

13 (h) Notwithstanding any other law, no claim of attorney work
14 product as described in Section 2018 of the Code of Civil
15 Procedure shall be sustained where there is probable cause to
16 believe that the lawyer is engaging or has engaged in criminal
17 activity related to the documentary evidence for which a warrant
18 is requested unless it is established at the hearing with respect to
19 the documentary evidence seized under the warrant that the
20 services of the lawyer were not sought or obtained to enable or aid
21 anyone to commit or plan to commit a crime or a fraud.

22 (i) Nothing in this section is intended to limit an attorney’s
23 ability to request an in camera hearing pursuant to the holding of
24 the Supreme Court of California in *People v. Superior Court (Laff)*
25 (2001) 25 Cal.4th 703.

26 (j) *In addition to any other circumstance permitting a*
27 *magistrate to issue a warrant for a person or property in another*
28 *county, when the property or things to be seized consist of any item*
29 *or constitute any evidence that tends to show a violation of Section*
30 *530.5, the magistrate may issue a warrant to search a person or*
31 *property located in another county if the person whose identifying*
32 *information was taken or used resides in the same county as the*
33 *issuing court.*

34 ~~read:~~

35 ~~786. (a) When property taken in one jurisdictional territory~~
36 ~~by burglary, carjacking, robbery, theft, or embezzlement has been~~
37 ~~brought into another, or when property is received in one~~
38 ~~jurisdictional territory with the knowledge that it has been stolen~~
39 ~~or embezzled and the property was stolen or embezzled in another~~
40 ~~jurisdictional territory, the jurisdiction of the offense is in any~~

1 competent court within either jurisdictional territory, or any
2 contiguous jurisdictional territory if the arrest is made within the
3 contiguous territory, the prosecution secures on the record the
4 defendant's knowing, voluntary, and intelligent waiver of the right
5 of vicinage, and the defendant is charged with one or more
6 property crimes in the arresting territory.

7 ~~(b) (1) The jurisdiction of a criminal action for unauthorized~~
8 ~~use of personal identifying information, as defined in Section~~
9 ~~530.5, shall also include the county in which the victim resided at~~
10 ~~the time of the commission of the offense, the county in which the~~
11 ~~theft of the personal identifying information occurred, or the~~
12 ~~county in which the information was used for an illegal purpose.~~
13 ~~If multiple offenses of unauthorized use of personal identifying~~
14 ~~information, all involving the same defendant or defendants and~~
15 ~~the same personal identifying information belonging to the one~~
16 ~~person, occur in multiple jurisdictions, any one of those~~
17 ~~jurisdictions is a proper jurisdiction for all of the offenses.~~

18 ~~(2) When charges alleging multiple offenses of unauthorized~~
19 ~~use of personal identifying information occurring in multiple~~
20 ~~territorial jurisdictions are filed in one county pursuant to this~~
21 ~~section, the court shall hold a hearing to consider whether the~~
22 ~~matter should proceed in the county of filing, or whether one or~~
23 ~~more counts should be severed. The district attorney filing the~~
24 ~~complaint shall present evidence to the court that the district~~
25 ~~attorney in each county where any of the charges could have been~~
26 ~~filed has agreed that the matter should proceed in the county of~~
27 ~~filing. In determining whether all counts in the complaint should~~
28 ~~be joined in one county for prosecution, the court shall consider the~~
29 ~~location and complexity of the likely evidence, where the majority~~
30 ~~of the offenses occurred, the rights of the defendant and the people,~~
31 ~~and the convenience of, or hardship to, the victim and witnesses.~~

32 ~~(c) This section shall not be interpreted to alter victims' rights~~
33 ~~under Section 530.6.~~